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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92055153
Party	Defendant Delphix Corp.
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of
Trademark Registration No. 3,768,914 for DELPHIX (Logo) and Trademark Application No.:
77/944,256 for DELPHIX.

Embarcadero Technologies, Inc. Petitioner)	
)	
)	
vs.)	
)	
Delphix Corp. Registrant.)	Cancellation No.: 92055153 Opposition No.: 91197762
)	
)	

**DELPHIX CORP’S MOTION TO CONSOLIDATE OPPOSITION AND
CANCELLATION PROCEEDINGS**

Applicant/Registrant Delphix Corp (“Delphix”), by and through its attorneys, hereby moves the Trademark Trial and Appeal Board for an order consolidating the related Cancellation No. 92055153 and Opposition No. 91197762. Please note that this motion is being filed concurrently in Cancellation No. 92055153 and Opposition No. 91197762.

The Board may order consolidation of pending cases involving common questions of law or fact. TBMP § 511; Fed. R. Civ. Proc. 42(a). Here, the opposition and cancellation proceedings share: (1) identical parties; (2) substantially similar and identical witnesses; (3) the same mark asserted by the Opposer/Petitioner; (4) substantially similar and identical allegations regarding confusion between Opposer/Petitioner’s alleged mark and Delphix’s marks;¹ and (5)

¹ Compare paragraphs 1-14 of the Notice of Opposition with paragraphs 1-14 of the Cancellation Petition.

similar defenses based on Delphix's use of its United States Trademark Registration No. 3,768,914. In filing its petition to cancel Delphix's registration, Opposer/Petitioner conceded and represented to the Board that the cancellation and opposition proceedings were related. Thus, identical and common questions of fact and law will need to be addressed in each proceeding and consolidation is appropriate.²

Consolidation of the proceedings is further appropriate as it will benefit both parties by resulting in less duplication of effort – saving the parties time, effort and expense. No prejudice or inconvenience will be caused by consolidation of the proceedings. Both proceedings are in their initial stages and only two months apart in their schedules. Accordingly, pursuant to TBMP § 511, Delphix requests that the Board follow its standard procedure that “upon consolidation, the Board will reset dates for the consolidated proceeding, usually by adopting the dates as set in the most recently instituted of the cases being consolidated.”

Based on the foregoing, Applicant/Registrant Delphix hereby respectfully requests that the Board issue an order granting this Motion to Consolidate Cancellation No. 92055153 and Opposition No. 91197762. Applicant/Registrant Delphix further respectfully requests that the Board issue an order resetting the schedule for Opposition No. 91197762 so that it is consistent with the more recently instituted Cancellation No. 92055153.

² *World Hockey Ass'n v. Tudor Metal Products Corp.*, 185 U.S.P.Q. 246, 248 (T.T.A.B. 1975) (oppositions involving similar marks and similar issues consolidated); *Federated Department Stores, Inc. v. Gold Circle Ins. Co.*, 226 U.S.P.Q. 262, 263 (TTAB 1985) (granting consolidation).

Cancellation No.: 92055153

Opposition No.: 91197762

Respectfully submitted,

Dated: February 24, 2012

/s/ Eric Ball

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CERTIFICATE OF SERVICE BY HAND DELIVERY

I hereby certify that a true and correct copy of the foregoing **DELPHIX CORP'S**
MOTION TO CONSOLIDATE OPPOSITION AND CANCELLATION PROCEEDINGS
is being served on February 24, 2012, by hand delivery on Opposer/Petitioner's Attorney of
Record at the address below:

Martin R. Greenstein
Techmark A Law Corporation
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/s/ Eric Ball
Eric Ball